

Exhibit J-3

1 619. In the course of New GM's business, it willfully failed to disclose and
2 actively concealed the dangerous risk posed by the defects discussed above. New
3 GM compounded the deception by repeatedly asserting that GM-branded vehicles
4 were safe, reliable, and of high quality, and by claiming to be a reputable
5 manufacturer that valued safety and stood behind its vehicles once they are on the
6 road.

7 620. New GM's unfair or deceptive acts or practices were likely to and did in
8 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
9 reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of
10 safety at New GM, and the true value of the class vehicles.

11 621. New GM intentionally and knowingly misrepresented material facts
12 regarding the class vehicles with an intent to mislead Plaintiffs and the Michigan
13 Class.

14 622. New GM knew or should have known that its conduct violated the
15 Michigan CPA.

16 623. As alleged above, New GM made material statements about the safety
17 and reliability of the class vehicles and the GM brand that were either false or
18 misleading.

19 624. New GM owed Plaintiffs a duty to disclose the true safety and reliability
20 of the class vehicles and the devaluing of safety at New GM, because New GM:

21 (a) Possessed exclusive knowledge that it valued cost-cutting over
22 safety, selected parts from the cheapest supplier regardless of quality, and actively
23 discouraged employees from finding and flagging known safety defects, and that this
24 approach would necessarily cause the existence of more defects in the vehicles it
25 designed and manufactured;

26 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

27 (c) Made incomplete representations about the safety and reliability
28 of the class vehicles generally, and the valve guide defects in particular, while

1 purposefully withholding material facts from Plaintiffs that contradicted these
2 representations.

3 625. Because New GM fraudulently concealed the defects in the class
4 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
5 attached to those vehicles by New GM's conduct, they are now worth significantly
6 less than they otherwise would be.

7 626. New GM's systemic devaluation of safety and its concealment of the
8 defects in the class vehicles were material to Plaintiffs and the Michigan Class. A
9 vehicle made by a reputable manufacturer of vehicles is worth more than an
10 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
11 conceals defects rather than promptly remedies them.

12 627. Plaintiffs and the Michigan Class suffered ascertainable loss caused by
13 New GM's misrepresentations and its concealment of and failure to disclose material
14 information. Plaintiffs who purchased class vehicles after the date of New GM's
15 inception either would have paid less for their vehicles or would not have purchased
16 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
17 of New GM's misconduct.

18 628. Regardless of time of purchase or lease, no Plaintiffs would have
19 maintained and continued to drive their vehicles had they been aware of New GM's
20 misconduct. By contractually assuming TREAD Act responsibilities with respect to
21 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
22 those vehicles because the TREAD Act on its face only applies to vehicle
23 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
24 vehicle owners to refrain from unfair and deceptive acts or practices under the
25 Michigan CPA. And, in any event, all class vehicle owners suffered ascertainable
26 loss in the form of the diminished value of their vehicles as a result of New GM's
27 deceptive and unfair acts and practices made in the course of New GM's business.

28 ////

1 629. As a direct and proximate result of New GM's violations of the
2 Michigan CPA, Plaintiffs and the Michigan Class have suffered injury-in-fact and/or
3 actual damage.

630. Plaintiffs seek injunctive relief to enjoin New GM from continuing its unfair and deceptive acts; monetary relief against New GM measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$250 for Plaintiffs and each Michigan Class member; reasonable attorneys' fees; and any other just and proper relief available under MICH. COMP. LAWS § 445.911.

631. Plaintiffs also seek punitive damages against New GM because it carried out despicable conduct with willful and conscious disregard of the rights and safety of others. New GM intentionally and willfully misrepresented the safety and reliability of the class vehicles, deceived Plaintiffs and Michigan Class Members on life-or-death matters, and concealed material facts that only they knew, all to avoid the expense and public relations nightmare of correcting a deadly flaw in vehicles it repeatedly promised Plaintiffs and Michigan Class Members were safe. New GM's unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

COUNT XXXIX

FRAUD BY CONCEALMENT

21 632. Plaintiffs reallege and incorporate by reference all paragraphs as though
22 fully set forth herein.

633. This claim is brought on behalf of Nationwide Class Members who are
Michigan residents (the “Michigan Class”).

25 634. New GM concealed and suppressed material facts concerning the
26 quality of the class vehicles.

635. New GM concealed and suppressed material facts concerning the culture of New GM – a culture characterized by an emphasis on cost-cutting, the

1 studious avoidance of quality issues, and a shoddy design process.

2 636. New GM concealed and suppressed material facts concerning the
3 defects in the class vehicles, and that it valued cost-cutting over quality and took
4 steps to ensure that its employees did not reveal known defects to regulators or
5 consumers.

6 637. New GM did so in order to boost confidence in its vehicles and falsely
7 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
8 that New GM was a reputable manufacturer that stands behind its vehicles after they
9 are sold and that its vehicles are safe and reliable. The false representations were
10 material to consumers, both because they concerned the quality and safety of the
11 class vehicles and because the representations played a significant role in the value of
12 the vehicles.

13 638. New GM had a duty to disclose the defects in the class vehicles because
14 they were known and/or accessible only to New GM, were in fact known to New
15 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
16 superior knowledge and access to the facts, and New GM knew the facts were not
17 known to or reasonably discoverable by Plaintiffs and the Michigan Class. New GM
18 also had a duty to disclose because it made many general affirmative representations
19 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
20 were misleading, deceptive and incomplete without the disclosure of the additional
21 facts set forth above regarding defects in the class vehicles. Having volunteered to
22 provide information to Plaintiffs, GM had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because
24 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
25 and the Michigan Class.

26 639. New GM actively concealed and/or suppressed these material facts, in
27 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
28 image and cost New GM money, and it did so at the expense of Plaintiffs and the

1 Michigan Class.

2 640. On information and belief, New GM has still not made full and adequate
3 disclosure and continues to defraud Plaintiffs and the Michigan Class and conceal
4 material information regarding defects that exist in the class vehicles.

5 641. Plaintiffs and the Michigan Class were unaware of these omitted
6 material facts and would not have acted as they did if they had known of the
7 concealed and/or suppressed facts, in that they would not have purchased cars
8 manufactured by New GM; and/or they would not have purchased cars manufactured
9 by Old GM in the time after New GM had come into existence and had fraudulently
10 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
11 not have continued to drive their vehicles or would have taken other affirmative
12 steps. Plaintiffs' and the Michigan Class's actions were justified. New GM was in
13 exclusive control of the material facts and such facts were not known to the public,
14 Plaintiffs, or the Michigan Class.

15 642. Because of the concealment and/or suppression of the facts, Plaintiffs
16 and the Michigan Class sustained damage because they own vehicles that diminished
17 in value as a result of New GM's concealment of, and failure to timely disclose, the
18 defects in the class vehicles and the quality issues engendered by New GM's
19 corporate policies. Had they been aware of the defects that existed in the class
20 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
21 New GM came into existence either would have paid less for their vehicles or would
22 not have purchased or leased them at all; and no Plaintiffs regardless of time of
23 purchase or lease would have maintained their vehicles.

24 643. The value of all Michigan Class Members' vehicles has diminished as a
25 result of New GM's fraudulent concealment of the defects which have tarnished the
26 Corvette brand and made any reasonable consumer reluctant to purchase any of the
27 class vehicles, let alone pay what otherwise would have been fair market value for
28 the vehicles.

1 644. Accordingly, New GM is liable to the Michigan Class for damages in ar
2 amount to be proven at trial.

3 645. New GM's acts were done maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiffs' and the Michigan Class's
5 rights and well-being to enrich New GM. New GM's conduct warrants an assessmen
6 of punitive damages in an amount sufficient to deter such conduct in the future,
7 which amount is to be determined according to proof.

8 **COUNT XL**

9 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

10 **(MICH. COMP. LAWS § 440.2314)**

11 646. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.

13 647. This claim is brought only on behalf of the Michigan Class.

14 648. New GM was a merchant with respect to motor vehicles within the
15 meaning of MICH. COMP. LAWS § 440.2314(1).

16 649. Under MICH. COMP. LAWS § 440.2314, a warranty that the class
17 vehicles were in merchantable condition was implied by law in the transactions wher
18 Plaintiffs purchased or leased their class vehicles from New GM on or after July 11,
19 2009.

20 650. These vehicles, when sold and at all times thereafter, were not
21 merchantable and are not fit for the ordinary purpose for which cars are used.
22 Specifically, the class vehicles are inherently defective in that engines are subject to
23 unusual premature wear and catastrophic failure.

24 651. New GM was provided notice of these issues by numerous complaints
25 filed against it, internal investigations, and by numerous individual letters and
26 communications sent by Plaintiffs and the Michigan Class before or within a
27 reasonable amount of time after New GM issued the recall and the allegations of
28 vehicle defects became public.

652. As a direct and proximate result of New GM's breach of the implied warranty of merchantability, Plaintiffs and the Michigan Class members have been damaged in an amount to be proven at trial.

COUNT XLI

**FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM
AGAINST OLD GM IN BANKRUPTCY**

653. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

654. This claim is brought only on behalf of Class members who are Michigan residents and who owned their class vehicle for at least some period of time between July 11, 2009 and November 30, 2009.

655. New GM was aware of the defects in class vehicles sold by Old GM from the moment it came into existence upon entry of the Sale Order And Sale Agreement by which New GM acquired substantially all the assets of Old GM.

656. The Michigan Class did not receive notice of the defect in class vehicles prior to the entry of the Sale Order. No recall occurred.

657. In September of 2009, the bankruptcy court entered the Bar Date Order, establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claims to be filed against Old GM.

658. Because New GM concealed its knowledge of the defect in the class vehicles, the Michigan Class did not receive notice of the defect prior to the passage of the Bar Date. No recall occurred.

659. In 2011, the bankruptcy court approved a Chapter 11 Plan under which the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceeds of the bankruptcy sale to, among others, the holders of claims that were ultimately allowed.

660. The out-of-pocket consideration provided by New GM for its acquisition of Old GM consisted of 10% of the post-closing outstanding shares of

1 New GM common stock and two series of warrants, each to purchase 7.5% of the
2 post-closing shares of New GM (collectively, the “New GM Securities”).

3 661. Through an “accordion feature” in the Sale Agreement, New GM agreed
4 that it would provide additional consideration if the aggregate amount of allowed
5 general unsecured claims exceeded \$35 billion. In that event, New GM would be
6 required to issue additional shares of New GM Common Stock for the benefit of the
7 GUC Trust’s beneficiaries.

8 662. As of September 30, 2014, the total amount of Allowed Claims was
9 approximately \$31.854 billion, and the total amount of Disputed Claims was
10 approximately \$79.5 million.

11 663. As of September 30, 2014, the GUC Trust had distributed more than
12 89% of the New GM Securities. After a subsequent November 12 distribution, the
13 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all o
14 which is already slated to pay the GUC Trust’s expenses and existing beneficiaries o
15 the Trust.

16 664. But for New GM’s fraudulent concealment of the defects, the Michigan
17 Class would have filed claims against Old GM before the Bar Date.

18 665. Had the Michigan Class filed timely claims before the Bar Date, the
19 claims would have been allowed.

20 666. New GM’s concealment and suppression of the material fact of the
21 defect in class vehicles over the first several months of its existence served to preven
22 the filing of claims by the Class.

23 667. New GM had a duty to disclose the defect because in class vehicles the
24 information was known and/or accessible only to New GM who had superior
25 knowledge and access to the facts, and New GM knew the facts were not known to
26 or reasonably discoverable by Plaintiffs and the Michigan Class. These omitted and
27 concealed facts were material because they directly impacted the safety and the valu
28 of the class vehicles purchased or leased by Plaintiffs and the Michigan Class, who

1 had a limited period of time in which to file a claim against the manufacturer of the
2 vehicles, Old GM.

3 668. Plaintiffs and the Michigan Class were unaware of these omitted
4 material facts and would not have acted as they did if they had known of the
5 concealed and/or suppressed facts. Plaintiffs' and the Michigan Class's actions were
6 justified. New GM was in exclusive control of the material facts and such facts were
7 not known to the public, Plaintiffs, or the Michigan Class.

8 669. Because of the concealment and/or suppression of the facts, Plaintiffs
9 and the Michigan Class sustained damage because they lost their chance to file a
10 claim against Old GM and seek payment from the GUC Trust. Had they been aware
11 of the defects that existed in their vehicles, Plaintiffs would have timely filed claims
12 and would have recovered from the GUC Trust.

13 670. Accordingly, New GM is liable to the Michigan Class members for their
14 damages in an amount to be proven at trial.

15 671. New GM's acts were done maliciously, oppressively, deliberately, with
16 intent to defraud, and in reckless disregard of Plaintiffs' and the Michigan Class's
17 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
18 of punitive damages in an amount sufficient to deter such conduct in the future,
19 which amount is to be determined according to proof.

20 **COUNT XLII**

21 **THIRD-PARTY BENEFICIARY CLAIM**

22 672. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 673. This claim is brought only on behalf of Class members who are
25 Michigan residents (the "Michigan Class").

26 674. In the Sales Agreement through which New GM acquired substantially
27 all of the assets of New GM, New GM explicitly agreed as follows:

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1 From and after the Closing, [New GM] shall comply with the
2 certification, reporting and recall requirements of the National Traffic
3 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
4 Recall Enhancement, Accountability and Documentation Act, the Clean
5 Air Act, the California Health and Safety Code and similar Laws, in
6 each case, to the extent applicable in respect of vehicles and vehicle
7 parts manufactured or distributed by [Old GM].

8 675. With the exception of the portion of the agreement that purports to
9 immunize New GM from its own independent misconduct with respect to cars and
10 parts made by Old GM, the Sales Agreement is a valid and binding contract.

11 676. But for New GM's covenant to comply with the TREAD Act with
12 respect to cars and parts made by Old GM, the TREAD Act would have no
13 application to New GM with respect to those cars and parts. That is because the
14 TREAD Act on its face imposes reporting and recall obligations only on the
15 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

16 677. Because New GM agreed to comply with the TREAD Act with respect
17 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
18 make quarterly submissions to NHTSA of "early warning reporting" data, including
19 incidents involving property damage, warranty claims, consumer complaints, and
20 field reports concerning failure, malfunction, lack of durability or other performance
21 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
22 underlying records on which the early warning reports are based and all records
23 containing information on malfunctions that may be related to motor vehicle safety.
24 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
25 or should know that a safety defect exists – including notifying NHTSA and
26 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
27 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

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678. Plaintiffs, as owners and lessors of vehicles and parts manufactured by Old GM, are the clear intended beneficiaries of New GM's agreement to comply with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the benefit of having a manufacturer responsible for monitoring the safety of their Old GM vehicles and making certain that any known defects would be promptly remedied.

679. Although the Sale Order which consummated New GM's purchase of Old GM purported to give New GM immunity from claims concerning vehicles or parts made by Old GM, the bankruptcy court recently ruled that provision to be unenforceable, and that New GM can be held liable for its own post-bankruptcy sale conduct with respect to cars and parts made by Old GM. Therefore, that provision of the Sale Order and related provisions of the Sale Agreement cannot be read to bar Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale breaches of the promise it made in the Sale Agreement.

680. New GM breached its covenant to comply with the TREAD Act with respect to the class vehicles, as it failed to take action to remediate the defects at any time, up to the present.

681. Plaintiffs and the Michigan Class were damaged as a result of New GM's breach. Because of New GM's failure to timely remedy the defect in class vehicles, the value of Old GM class vehicles has diminished in an amount to be determined at trial.

COUNT XLIII

3 UNJUST ENRICHMENT

682. Plaintiffs reallege and incorporate by reference all paragraphs as though
fully set forth herein.

6 683. This claim is brought on behalf of members of the Michigan Class who
7 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
8 after New GM came into existence, and who purchased or leased class vehicles in the

1 time period before New GM came into existence, which cars were still on the road
2 after New GM came into existence (the "Michigan Unjust Enrichment Class").

3 684. New GM has received and retained a benefit from the Plaintiffs and
4 inequity has resulted.

5 685. New GM has benefitted from selling and leasing defective cars,
6 including Certified Pre-Owned cars, whose value was artificially inflated by New
7 GM's concealment of defect issues that plagued the class vehicles for more than they
8 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
9 pay other costs.

10 686. With respect to the class vehicles purchased before New GM came into
11 existence that were still on the road after New GM came into existence and as to
12 which New GM had unjustly and unlawfully determined not to recall, New GM
13 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
14 from its statements about the success of New GM.

15 687. Thus, all Michigan Unjust Enrichment Class Members conferred a
16 benefit on New GM.

17 688. It is inequitable for New GM to retain these benefits.

18 689. Plaintiffs were not aware about the true facts about class vehicles, and
19 did not benefit from GM's conduct.

20 690. New GM knowingly accepted the benefits of its unjust conduct.
21 As a result of New GM's conduct, the amount of its unjust enrichment should be
22 disgorged, in an amount according to proof.

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KNAPP,
PETERSEN
& CLARKE

1 Montana

2 COUNT XLIV

3 VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND
4 CONSUMER PROTECTION ACT OF 1973
5 (MONT. CODE ANN. § 30-14-101, et seq.)

6 691. Plaintiffs reallege and incorporate by reference all paragraphs as though
7 fully set forth herein.

8 692. This claim is brought only on behalf of Nationwide Class Members who
9 are Montana residents (the "Montana Class").

10 693. New GM, Plaintiffs and the Montana Class are "persons" within the
11 meaning of MONT. CODE ANN. § 30-14-102(6).

12 694. Montana Class Members are "consumer[s]" under MONT. CODE
13 ANN. § 30-14- 102(1).

14 695. The sale or lease of the class vehicles to Montana Class Members
15 occurred within "trade and commerce" within the meaning of MONT. CODE ANN.
16 § 30-14-102(8), and New GM committed deceptive and unfair acts in the conduct of
17 "trade and commerce" as defined in that statutory section.

18 696. The Montana Unfair Trade Practices and Consumer Protection Act
19 ("Montana CPA") makes unlawful any "unfair methods of competition and unfair or
20 deceptive acts or practices in the conduct of any trade or commerce." MONT. CODE
21 ANN. § 30-14-103. By systematically devaluing safety and concealing defects in the
22 class vehicles, New GM engaged in unfair and deceptive acts or practices in
23 violation of the Montana CPA.

24 697. In the course of its business, New GM systematically devalued safety
25 and concealed defects in class vehicles as described herein and otherwise engaged in
26 activities with a tendency or capacity to deceive. New GM also engaged in unlawful
27 trade practices by employing deception, deceptive acts or practices, fraud,
28 misrepresentations, or concealment, suppression or omission of any material fact

KNAPP,
PETERSEN
& CLARKE

1 with intent that others rely upon such concealment, suppression or omission, in
2 connection with the sale of the class vehicles.

3 698. From the date of its inception on July 11, 2009, New GM knew of many
4 serious defects affecting many models and years of the class vehicles, because of (i)
5 the knowledge of Old GM personnel who remained at New GM; (ii) continuous
6 reports, investigations, and notifications from regulatory authorities; and (iii)
7 ongoing performance of New GM's TREAD Act obligations. New GM became
8 aware of other serious defects and systemic safety issues years ago, but concealed all
9 of that information.

10 699. New GM was also aware that it valued cost-cutting over safety, selected
11 parts from the cheapest supplier regardless of quality, and actively discouraged
12 employees from finding and flagging known safety defects, and that this approach
13 would necessarily cause the existence of more defects in the vehicles it designed and
14 manufactured and the failure to disclose and remedy defects in all the class vehicles.
15 New GM concealed this information as well.

16 700. By failing to disclose and by actively concealing the many defects in the
17 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
18 presenting itself as a reputable manufacturer that valued safety and stood behind its
19 vehicles after they were sold, New GM engaged in unfair and deceptive business
20 practices in violation of the Montana CPA.

21 701. In the course of New GM's business, it willfully failed to disclose and
22 actively concealed the dangerous risk posed by the defects discussed above. New
23 GM compounded the deception by repeatedly asserting that the class vehicles were
24 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer
25 that valued safety and stood behind its vehicles once they are on the road.

26 702. New GM's unfair or deceptive acts or practices were likely to and did in
27 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
28 reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of

1 safety at New GM, and the true value of the class vehicles.

2 703. New GM intentionally and knowingly misrepresented material facts
3 regarding the class vehicles and the GM brand with an intent to mislead Plaintiffs
4 and the Montana Class.

5 704. New GM knew or should have known that its conduct violated the
6 Montana CPA.

7 705. As alleged above, New GM made material statements about the safety
8 and reliability of the class vehicles that were either false or misleading.

9 706. New GM owed Plaintiffs a duty to disclose the true safety and reliability
10 of the class vehicles and the devaluing of safety at New GM, because New GM:

11 (a) Possessed exclusive knowledge that it valued cost-cutting over
12 safety, selected parts from the cheapest supplier regardless of quality, and actively
13 discouraged employees from finding and flagging known safety defects, and that this
14 approach would necessarily cause the existence of more defects in the vehicles it
15 designed and manufactured;

16 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

17 (c) Made incomplete representations about the safety and reliability
18 of the class vehicles generally, and the valve guide defects in particular, while
19 purposefully withholding material facts from Plaintiffs that contradicted these
20 representations.

21 707. Because New GM fraudulently concealed the many defects in the class
22 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
23 attached to those vehicles by New GM's conduct, they are now worth significantly
24 less than they otherwise would be.

25 708. New GM's systemic devaluation of safety and its concealment of the
26 defects in the class vehicles were material to Plaintiffs and the Montana Class. A
27 vehicle made by a reputable manufacturer of vehicles is worth more than an
28 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that

1 conceals defects rather than promptly remedies them.

2 709. Plaintiffs and the Montana Class suffered ascertainable loss caused by
3 New GM's misrepresentations and its concealment of and failure to disclose materia
4 information. Plaintiffs who purchased the class vehicles after the date of New GM's
5 inception either would have paid less for their vehicles or would not have purchased
6 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
7 of New GM's misconduct.

8 710. Regardless of time of purchase or lease, no Plaintiffs would have
9 maintained and continued to drive their vehicles had they been aware of New GM's
10 misconduct. By contractually assuming TREAD Act responsibilities with respect to
11 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
12 those vehicles because the TREAD Act on its face only applies to vehicle
13 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
14 vehicle owners to refrain from unfair and deceptive acts or practices under the
15 Montana CPA. And, in any event, all class vehicle owners suffered ascertainable
16 loss in the form of the diminished value of their vehicles as a result of New GM's
17 deceptive and unfair acts and practices made in the course of New GM's business.

18 711. As a direct and proximate result of New GM's violations of the
19 Montana CPA, Plaintiffs and the Montana Class have suffered injury-in-fact and/or
20 actual damage.

21 712. Because the New GM's unlawful methods, acts, and practices have
22 caused Montana Class Members to suffer an ascertainable loss of money and
23 property, the Montana Class seeks from New GM actual damages or \$500,
24 whichever is greater, discretionary treble damages, reasonable attorneys' fees, an
25 order enjoining New GM's unfair, unlawful, and/or deceptive practices, and any
26 other relief the Court considers necessary or proper, under MONT. CODE ANN. §
27 30-14-133.

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COUNT XLV

FRAUD BY CONCEALMENT

713. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

714. This claim is brought on behalf of Nationwide Class Members who are Montana residents (the "Montana Class").

715. New GM concealed and suppressed material facts concerning the quality of the class vehicles.

716. New GM concealed and suppressed material facts concerning the culture of New GM – a culture characterized by an emphasis on cost-cutting, the studious avoidance of quality issues, and a shoddy design process.

717. New GM concealed and suppressed material facts concerning the defects in the class vehicles, and that it valued cost-cutting over quality and took steps to ensure that its employees did not reveal known defects to regulators or consumers.

718. New GM did so in order to boost confidence in its vehicles and falsely assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles that New GM was a reputable manufacturer that stands behind its vehicles after they are sold and that its vehicles are safe and reliable. The false representations were material to consumers, both because they concerned the quality and safety of the class vehicles and because the representations played a significant role in the value of the vehicles.

719. New GM had a duty to disclose the defects in the class vehicles because they were known and/or accessible only to New GM, were in fact known to New GM as of the time of its creation in 2009 and at every point thereafter, New GM had superior knowledge and access to the facts, and New GM knew the facts were not known to or reasonably discoverable by Plaintiffs and the Montana Class. New GM also had a duty to disclose because it made many general affirmative representations

1 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
2 were misleading, deceptive and incomplete without the disclosure of the additional
3 facts set forth above regarding defects in the class vehicles. Having volunteered to
4 provide information to Plaintiffs, GM had the duty to disclose not just the partial
5 truth, but the entire truth. These omitted and concealed facts were material because
6 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
7 and the Montana Class.

8 720. New GM actively concealed and/or suppressed these material facts, in
9 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
10 image and cost New GM money, and it did so at the expense of Plaintiffs and the
11 Montana Class.

12 721. On information and belief, New GM has still not made full and adequate
13 disclosure and continues to defraud Plaintiffs and the Montana Class and conceal
14 material information regarding defects that exist in the class vehicles.

15 722. Plaintiffs and the Montana Class were unaware of these omitted material
16 facts and would not have acted as they did if they had known of the concealed and/or
17 suppressed facts, in that they would not have purchased cars manufactured by New
18 GM; and/or they would not have purchased cars manufactured by Old GM in the
19 time after New GM had come into existence and had fraudulently opted to conceal,
20 and to misrepresent, the true facts about the vehicles; and/or would not have
21 continued to drive their vehicles or would have taken other affirmative steps.
22 Plaintiffs' and the Montana Class's actions were justified. New GM was in exclusive
23 control of the material facts and such facts were not known to the public, Plaintiffs,
24 or the Montana Class.

25 723. Because of the concealment and/or suppression of the facts, Plaintiffs
26 and the Montana Class sustained damage because they own vehicles that diminished
27 in value as a result of New GM's concealment of, and failure to timely disclose, the
28 defects in the class vehicles and the quality issues engendered by New GM's

1 corporate policies. Had they been aware of the defects that existed in the class
2 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
3 New GM came into existence either would have paid less for their vehicles or would
4 not have purchased or leased them at all; and no Plaintiffs regardless of time of
5 purchase or lease would have maintained their vehicles.

6 724. The value of all Montana Class Members' vehicles has diminished as a
7 result of New GM's fraudulent concealment of the defects which have tarnished the
8 Corvette brand and made any reasonable consumer reluctant to purchase any of the
9 class vehicles, let alone pay what otherwise would have been fair market value for
10 the vehicles.

11 725. Accordingly, New GM is liable to the Montana Class for damages in an
12 amount to be proven at trial.

13 726. New GM's acts were done maliciously, oppressively, deliberately, with
14 intent to defraud, and in reckless disregard of Plaintiffs' and the Montana Class's
15 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
16 of punitive damages in an amount sufficient to deter such conduct in the future,
17 which amount is to be determined according to proof.

18 **COUNT XLVI**

19 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

20 **(MONT. CODE § 30-2-314)**

21 727. Plaintiffs reallege and incorporate by reference all paragraphs as though
22 fully set forth herein.

23 728. This claim is brought only on behalf of the Montana Class.

24 729. New GM was a merchant with respect to motor vehicles under MONT.
25 CODE § 30-2-104(1).

26 730. Under MONT. CODE § 30-2-314, a warranty that the class vehicles
27 were in merchantable condition was implied by law in the transactions when
28 Plaintiffs purchased or leased their class vehicles from New GM on or after July 11,

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1 2009.

2 731. These vehicles, when sold and at all times thereafter, were not
3 merchantable and are not fit for the ordinary purpose for which cars are used.
4 Specifically, the class vehicles are inherently defective in that engines are subject to
5 unusual premature wear and catastrophic failure.

6 732. New GM was provided notice of these issues by numerous complaints
7 filed against it, internal investigations, and by numerous individual letters and
8 communications sent by Plaintiffs and the Montana Class before or within a
9 reasonable amount of time after New GM issued the recall and the allegations of
10 vehicle defects became public.

11 733. As a direct and proximate result of New GM's breach of the warranties
12 of merchantability, Plaintiffs and the Montana Class members have been damaged in
13 an amount to be proven at trial.

14 **COUNT XLVII**

15 **FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM**
16 **AGAINST OLD GM IN BANKRUPTCY**

17 734. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.

19 735. This claim is brought only on behalf of Class members who are
20 Montana residents and who owned their class vehicle for at least some period of time
21 between July 11, 2009 and November 30, 2009.

22 736. New GM was aware of the defects in class vehicles sold by Old GM
23 from the moment it came into existence upon entry of the Sale Order And Sale
24 Agreement by which New GM acquired substantially all the assets of Old GM.

25 737. The Montana Class did not receive notice of the defect in class vehicles
26 prior to the entry of the Sale Order. No recall occurred.

27 738. In September of 2009, the bankruptcy court entered the Bar Date Order
28 establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claim

1 to be filed against Old GM.

2 739. Because New GM concealed its knowledge of the defect in class
3 vehicles, the Montana Class did not receive notice of the defect prior to the passage
4 of the Bar Date. No recall occurred.

5 740. In 2011, the bankruptcy court approved a Chapter 11 Plan under which
6 the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceed
7 of the bankruptcy sale to, among others, the holders of claims that were ultimately
8 allowed.

9 741. The out-of-pocket consideration provided by New GM for its
10 acquisition of Old GM consisted of 10% of the post-closing outstanding shares of
11 New GM common stock and two series of warrants, each to purchase 7.5% of the
12 post-closing shares of New GM (collectively, the "New GM Securities").

13 742. Through an "accordion feature" in the Sale Agreement, New GM agree
14 that it would provide additional consideration if the aggregate amount of allowed
15 general unsecured claims exceeded \$35 billion. In that event, New GM would be
16 required to issue additional shares of New GM Common Stock for the benefit of the
17 GUC Trust's beneficiaries.

18 743. As of September 30, 2014, the total amount of Allowed Claims was
19 approximately \$31.854 billion, and the total amount of Disputed Claims was
20 approximately \$79.5 million.

21 744. As of September 30, 2014, the GUC Trust had distributed more than
22 89% of the New GM Securities. After a subsequent November 12 distribution, the
23 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all o
24 which is already slated to pay the GUC Trust's expenses and existing beneficiaries o
25 the Trust.

26 745. But for New GM's fraudulent concealment of the defects, the Montana
27 Class would have filed claims against Old GM before the Bar Date.

28 ///

1 746. Had the Montana Class filed timely claims before the Bar Date, the
2 claims would have been allowed.

3 747. New GM's concealment and suppression of the material fact of the
4 defect in class vehicles over the first several months of its existence served to preven
5 the filing of claims by the Class.

6 748. New GM had a duty to disclose the defect in class vehicles because the
7 information was known and/or accessible only to New GM who had superior
8 knowledge and access to the facts, and New GM knew the facts were not known to
9 or reasonably discoverable by Plaintiffs and the Montana Class. These omitted and
10 concealed facts were material because they directly impacted the safety and the value
11 of the class vehicles purchased or leased by Plaintiffs and the Montana Class, who
12 had a limited period of time in which to file a claim against the manufacturer of the
13 vehicles, Old GM.

14 749. Plaintiffs and the Montana Class were unaware of these omitted materia
15 facts and would not have acted as they did if they had known of the concealed and/or
16 suppressed facts. Plaintiffs' and the Montana Class's actions were justified. New GM
17 was in exclusive control of the material facts and such facts were not known to the
18 public, Plaintiffs, or the Montana Class.

19 750. Because of the concealment and/or suppression of the facts, Plaintiffs
20 and the Montana Class sustained damage because they lost their chance to file a
21 claim against Old GM and seek payment from the GUC Trust. Had they been aware
22 of the defects that existed in their vehicles, Plaintiffs would have timely filed claims
23 and would have recovered from the GUC Trust.

24 751. Accordingly, New GM is liable to the Montana Class members for their
25 damages in an amount to be proven at trial.

26 752. New GM's acts were done maliciously, oppressively, deliberately, with
27 intent to defraud, and in reckless disregard of Plaintiffs' and the Montana Class's
28 rights and well-being to enrich New GM. New GM's conduct warrants an assessment

1 of punitive damages in an amount sufficient to deter such conduct in the future,
2 which amount is to be determined according to proof.

3 **COUNT XLVIII**

4 **THIRD-PARTY BENEFICIARY CLAIM**

5 753. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7 754. This claim is brought only on behalf of Class members who are
8 Montana residents (the "Montana Class").

9 755. In the Sales Agreement through which New GM acquired substantially
10 all of the assets of New GM, New GM explicitly agreed as follows:

11 From and after the Closing, [New GM] shall comply with the
12 certification, reporting and recall requirements of the National Traffic
13 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
14 Recall Enhancement, Accountability and Documentation Act, the Clean
15 Air Act, the California Health and Safety Code and similar Laws, in
16 each case, to the extent applicable in respect of vehicles and vehicle
17 parts manufactured or distributed by [Old GM].

18 756. With the exception of the portion of the agreement that purports to
19 immunize New GM from its own independent misconduct with respect to cars and
20 parts made by Old GM, the Sales Agreement is a valid and binding contract.

21 757. But for New GM's covenant to comply with the TREAD Act with
22 respect to cars and parts made by Old GM, the TREAD Act would have no
23 application to New GM with respect to those cars and parts. That is because the
24 TREAD Act on its face imposes reporting and recall obligations only on the
25 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

26 758. Because New GM agreed to comply with the TREAD Act with respect
27 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
28 make quarterly submissions to NHTSA of "early warning reporting" data, including

1 incidents involving property damage, warranty claims, consumer complaints, and
2 field reports concerning failure, malfunction, lack of durability or other performance
3 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
4 underlying records on which the early warning reports are based and all records
5 containing information on malfunctions that may be related to motor vehicle safety.
6 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
7 or should know that a safety defect exists – including notifying NHTSA and
8 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
9 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

10 759. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
11 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
12 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
13 benefit of having a manufacturer responsible for monitoring the safety of their Old
14 GM vehicles and making certain that any known defects would be promptly
15 remedied.

16 760. Although the Sale Order which consummated New GM's purchase of
17 Old GM purported to give New GM immunity from claims concerning vehicles or
18 parts made by Old GM, the bankruptcy court recently ruled that provision to be
19 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
20 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
21 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
22 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
23 breaches of the promise it made in the Sale Agreement.

24 761. New GM breached its covenant to comply with the TREAD Act with
25 respect to class vehicles, as it failed to take action to remediate the defects at any
26 time, up to the present.

27 762. Plaintiffs and the Montana Class were damaged as a result of New
28 GM's breach. Because of New GM's failure to timely remedy the defect in class

1 vehicles, the value of the Old GM vehicles has diminished in an amount to be
2 determined at trial.

3 **COUNT XLIX**

4 **UNJUST ENRICHMENT**

5 763. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7 764. This claim is brought on behalf of members of the Montana Class who
8 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
9 after New GM came into existence, and who purchased or leased class vehicles in the
10 time period before New GM came into existence, which cars were still on the road
11 after New GM came into existence (the "Montana Unjust Enrichment Class").

12 765. New GM has received and retained a benefit from the Plaintiffs and
13 inequity has resulted.

14 766. New GM has benefitted from selling and leasing defective cars,
15 including Certified Pre-Owned cars, whose value was artificially inflated by New
16 GM's concealment of defect issues that plagued the class vehicles, for more than
17 they were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced
18 to pay other costs.

19 767. With respect to the class vehicles purchased before New GM came into
20 existence that were still on the road after New GM came into existence and as to
21 which New GM had unjustly and unlawfully determined not to recall, New GM
22 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
23 from its statements about the success of New GM.

24 768. Thus, all Montana Unjust Enrichment Class Members conferred a
25 benefit on New GM.

26 769. It is inequitable for New GM to retain these benefits.

27 770. Plaintiffs were not aware about the true facts about the class vehicles,
28 and did not benefit from GM's conduct.

1 771. New GM knowingly accepted the benefits of its unjust conduct.

2 772. As a result of New GM's conduct, the amount of its unjust enrichment
3 should be disgorged, in an amount according to proof.

4 Ohio

5 **COUNT L**

6 **VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT**

7 **(OHIO REV. CODE ANN. § 1345.01, et seq.)**

8 773. Plaintiffs reallege and incorporate by reference all paragraphs as though
9 fully set forth herein.

10 774. This claim is brought only on behalf of Nationwide Class Members who
11 are Ohio residents (the "Ohio Class").

12 775. New GM is a "supplier" as that term is defined in OHIO REV. CODE §
13 1345.01(C).

14 776. Plaintiffs and the Ohio Class are "consumers" as that term is defined in
15 OHIO REV. CODE § 1345.01(D), and their purchases and leases of the class
16 vehicles are "consumer transactions" within the meaning of OHIO REV. CODE §
17 1345.01(A).

18 777. The Ohio Consumer Sales Practices Act ("Ohio CSPA"), OHIO REV.
19 CODE § 1345.02, broadly prohibits unfair or deceptive acts or practices in
20 connection with a consumer transaction. Specifically, and without limitation of the
21 broad prohibition, the Act prohibits suppliers from representing (i) that goods have
22 characteristics or uses or benefits which they do not have; (ii) that their goods are of
23 a particular quality or grade they are not; and (iii) the subject of a consumer
24 transaction has been supplied in accordance with a previous representation, if it has
25 not. *Id.* New GM's conduct as alleged above and below constitutes unfair and/or
26 deceptive consumer sales practices in violation of OHIO REV. CODE § 1345.02.

27 778. By systematically devaluing safety and concealing defects in the class
28 vehicles, New GM engaged in deceptive business practices prohibited by the Ohio

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1 CSPA, including: representing that class vehicles have characteristics, uses, benefits,
2 and qualities which they do not have; representing that class vehicles are of a
3 particular standard, quality, and grade when they are not; representing that the
4 subject of a transaction involving class vehicles has been supplied in accordance with
5 a previous representation when it has not; and engaging in other unfair or deceptive
6 acts or practices.

7 779. New GM's actions as set forth above occurred in the conduct of trade or
8 commerce.

9 780. In the course of its business, New GM systematically devalued safety
10 and concealed defects in the class vehicles as described herein and otherwise
11 engaged in activities with a tendency or capacity to deceive. New GM also engaged
12 in unlawful trade practices by employing deception, deceptive acts or practices,
13 fraud, misrepresentations, or concealment, suppression or omission of any material
14 fact with intent that others rely upon such concealment, suppression or omission, in
15 connection with the sale of class vehicles.

16 781. From the date of its inception on July 11, 2009, New GM knew of many
17 serious defects affecting many models and years of the class vehicles, because of (i)
18 the knowledge of Old GM personnel who remained at New GM; (ii) continuous
19 reports, investigations, and notifications from regulatory authorities; and (iii)
20 ongoing performance of New GM's TREAD Act obligations. New GM became
21 aware of other serious defects and systemic safety issues years ago, but concealed all
22 of that information.

23 782. New GM was also aware that it valued cost-cutting over safety, selected
24 parts from the cheapest supplier regardless of quality, and actively discouraged
25 employees from finding and flagging known safety defects, and that this approach
26 would necessarily cause the existence of more defects in the vehicles it designed and
27 manufactured and the failure to disclose and remedy defects in all class vehicles.
28 New GM concealed this information as well.

1 783. By failing to disclose and by actively concealing the many defects in the
2 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
3 presenting itself as a reputable manufacturer that valued safety and stood behind its
4 vehicles after they were sold, New GM engaged in unfair and deceptive business
5 practices in violation of the Ohio CSPA.

6 784. In the course of New GM's business, it willfully failed to disclose and
7 actively concealed the dangerous risk posed by the defects discussed above. New
8 GM compounded the deception by repeatedly asserting that the class vehicles were
9 safe, reliable, and of high quality, and by claiming to be a reputable manufacturer
10 that valued safety and stood behind its vehicles once they are on the road.

11 785. New GM's unfair or deceptive acts or practices were likely to and did in
12 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
13 reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of
14 safety at New GM, and the true value of the class vehicles.

15 786. New GM intentionally and knowingly misrepresented material facts
16 regarding the class vehicles with an intent to mislead Plaintiffs and the Ohio Class.

17 787. New GM knew or should have known that its conduct violated the Ohio
18 CSPA.

19 788. As alleged above, New GM made material statements about the safety
20 and reliability of the class vehicles and the GM brand that were either false or
21 misleading.

22 789. New GM owed Plaintiffs a duty to disclose the true safety and reliability
23 of the class vehicles and the devaluing of safety at New GM, because New GM:

24 (a) Possessed exclusive knowledge that it valued cost-cutting over
25 safety, selected parts from the cheapest supplier regardless of quality, and actively
26 discouraged employees from finding and flagging known safety defects, and that this
27 approach would necessarily cause the existence of more defects in the vehicles it
28 designed and manufactured;

1 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

2 (c) Made incomplete representations about the safety and reliability
3 of the class vehicles generally, and the valve guide defects in particular, while
4 purposefully withholding material facts from Plaintiffs that contradicted these
5 representations.

6 790. Because New GM fraudulently concealed the many defects in the class
7 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
8 attached to those vehicles by New GM's conduct, they are now worth significantly
9 less than they otherwise would be.

10 791. New GM's systemic devaluation of safety and its concealment of
11 defects in the class vehicles were material to Plaintiffs and the Ohio Class. A vehicle
12 made by a reputable manufacturer of vehicles is worth more than an otherwise
13 comparable vehicle made by a disreputable manufacturer of vehicles that conceals
14 defects rather than promptly remedies them.

15 792. Plaintiffs and the Ohio Class suffered ascertainable loss caused by New
16 GM's misrepresentations and its concealment of and failure to disclose material
17 information. Plaintiffs who purchased class vehicles after the date of New GM's
18 inception either would have paid less for their vehicles or would not have purchased
19 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
20 of New GM's misconduct.

21 793. Regardless of time of purchase or lease, no Plaintiffs would have
22 maintained and continued to drive their vehicles had they been aware of New GM's
23 misconduct. By contractually assuming TREAD Act responsibilities with respect to
24 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
25 those vehicles because the TREAD Act on its face only applies to vehicle
26 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
27 vehicle owners to refrain from unfair and deceptive acts or practices under the Ohio
28 CSPA. And, in any event, all class vehicle owners suffered ascertainable loss in the

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1 form of the diminished value of their vehicles as a result of New GM's deceptive and
2 unfair acts and practices that occurred in the course of New GM's business.

3 794. As a direct and proximate result of New GM's violations of the Ohio
4 CSPA, Plaintiffs and the Ohio Class have suffered injury-in-fact and/or actual
5 damage.

6 795. Ohio Class Members seek punitive damages against New GM because
7 New GM's conduct was egregious. New GM misrepresented the safety and
8 reliability of class vehicles, concealed myriad defects in millions of GM-branded
9 vehicles and the systemic safety issues plaguing New GM, deceived Class Members
10 on life-or-death matters, and concealed material facts that only New GM knew, all to
11 avoid the expense and public relations nightmare of correcting the serious flaw in its
12 culture and in millions of GM-branded vehicles. New GM's egregious conduct
13 warrants punitive damages.

14 796. Plaintiffs and the Ohio Class specifically do not allege herein a claim for
15 violation of OHIO REV. CODE § 1345.72.

16 797. New GM was on notice pursuant to OHIO REV. CODE § 1345.09(B)
17 that its actions constituted unfair, deceptive, and unconscionable practices by, for
18 example, *Mason v. Mercedes-Benz USA, LLC*, 2005 Ohio App. LEXIS 3911, at *33
19 (S.D. Ohio Aug. 18, 2005), and *Lilly v. Hewlett-Packard Co.*, 2006 U.S. Dist. LEXIS
20 22114, at *17-18 (S.D. Ohio Apr. 21, 2006). Further, New GM's conduct as alleged
21 above constitutes an act or practice previously declared to be deceptive or
22 unconscionable by rule adopted under division (B)(2) of section 1345.05 and
23 previously determined by Ohio courts to violate Ohio's Consumer Sales Practices
24 Act and was committed after the decisions containing these determinations were
25 made available for public inspection under division (A)(3) of O.R.C. § 1345.05. The
26 applicable rule and Ohio court opinions include, but are not limited to: OAC 109:4-
27 3-16; *Mason v. Mercedes-Benz USA, LLC*, 2005 Ohio 4296 (Ohio Ct. App. 2005);
28 *Khouri v. Lewis*, Cuyahoga Common Pleas No. 342098 (2001); State ex rel.

1 *Montgomery v. Canterbury*, Franklin App. No. 98CVH054085 (2000); and
2 *Fribourg v. Vandemark* (July 26, 1999), Clermont App. No CA99-02-017,
3 unreported (PIF # 10001874).

4 798. As a result of the foregoing wrongful conduct of New GM, Plaintiffs
5 and the Ohio Class have been damaged in an amount to be proven at trial, and seek
6 all just and proper remedies, including, but not limited to, actual and statutory
7 damages, an order enjoining New GM's deceptive and unfair conduct, treble
8 damages, court costs and reasonable attorneys' fees, pursuant to OHIO REV. CODE
9 § 1345.09, et seq.

10 **COUNT LI**

11 **FRAUD BY CONCEALMENT**

12 799. Plaintiffs reallege and incorporate by reference all paragraphs as though
13 fully set forth herein.

14 800. This claim is brought on behalf of Nationwide Class Members who are
15 Ohio residents (the "Ohio Class").

16 801. New GM concealed and suppressed material facts concerning the
17 quality of the class vehicles.

18 802. New GM concealed and suppressed material facts concerning the
19 culture of New GM – a culture characterized by an emphasis on cost-cutting, the
20 studious avoidance of quality issues, and a shoddy design process.

21 803. New GM concealed and suppressed material facts concerning the
22 defects in the class vehicles, and that it valued cost-cutting over quality and took
23 steps to ensure that its employees did not reveal known defects to regulators or
24 consumers.

25 804. New GM did so in order to boost confidence in its vehicles and falsely
26 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicle
27 that New GM was a reputable manufacturer that stands behind its vehicles after they
28 are sold and that its vehicles are safe and reliable. The false representations were

1 material to consumers, both because they concerned the quality and safety of the
2 class vehicles and because the representations played a significant role in the value of
3 the vehicles.

4 805. New GM had a duty to disclose the defects in the class vehicles because
5 they were known and/or accessible only to New GM, were in fact known to New
6 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
7 superior knowledge and access to the facts, and New GM knew the facts were not
8 known to or reasonably discoverable by Plaintiffs and the Ohio Class. New GM also
9 had a duty to disclose because it made many general affirmative representations
10 about the safety, quality, and lack of defects in its vehicles, as set forth above, which
11 were misleading, deceptive and incomplete without the disclosure of the additional
12 facts set forth above regarding defects in the class vehicles. Having volunteered to
13 provide information to Plaintiffs, GM had the duty to disclose not just the partial
14 truth, but the entire truth. These omitted and concealed facts were material because
15 they directly impact the value of the class vehicles purchased or leased by Plaintiffs
16 and the Ohio Class.

17 806. New GM actively concealed and/or suppressed these material facts, in
18 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
19 image and cost New GM money, and it did so at the expense of Plaintiffs and the
20 Ohio Class.

21 807. On information and belief, New GM has still not made full and adequate
22 disclosure and continues to defraud Plaintiffs and the Ohio Class and conceal
23 material information regarding defects that exist in the class vehicles.

24 808. Plaintiffs and the Ohio Class were unaware of these omitted material
25 facts and would not have acted as they did if they had known of the concealed and/or
26 suppressed facts, in that they would not have purchased cars manufactured by New
27 GM; and/or they would not have purchased cars manufactured by Old GM in the
28 time after New GM had come into existence and had fraudulently opted to conceal,

1 and to misrepresent, the true facts about the vehicles; and/or would not have
2 continued to drive their vehicles or would have taken other affirmative steps.
3 Plaintiffs' and the Ohio Class's actions were justified. New GM was in exclusive
4 control of the material facts and such facts were not known to the public, Plaintiffs,
5 or the Ohio Class.

6 809. Because of the concealment and/or suppression of the facts, Plaintiffs
7 and the Ohio Class sustained damage because they own vehicles that diminished in
8 value as a result of New GM's concealment of, and failure to timely disclose, the
9 defects in the class vehicles and the quality issues engendered by New GM's
10 corporate policies. Had they been aware of the defects that existed in the class
11 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
12 New GM came into existence either would have paid less for their vehicles or would
13 not have purchased or leased them at all; and no Plaintiffs regardless of time of
14 purchase or lease would have maintained their vehicles.

15 810. The value of all Ohio Class Members' vehicles has diminished as a
16 result of New GM's fraudulent concealment of the many defects which have
17 tarnished the Corvette brand and made any reasonable consumer reluctant to
18 purchase any of the class vehicles, let alone pay what otherwise would have been fair
19 market value for the vehicles.

20 811. Accordingly, New GM is liable to the Ohio Class for damages in an
21 amount to be proven at trial.

22 812. New GM's acts were done maliciously, oppressively, deliberately, with
23 intent to defraud, and in reckless disregard of Plaintiffs' and the Ohio Class's rights
24 and well-being to enrich New GM. New GM's conduct warrants an assessment of
25 punitive damages in an amount sufficient to deter such conduct in the future, which
26 amount is to be determined according to proof.

27 ///

28 ///

COUNT LII

IMPLIED WARRANTY IN TORT

813. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

814. Plaintiffs bring this claim only on behalf of the Ohio Class members.

815. The class vehicles sold or leased by New GM on or after July 11, 2009 contained a design defect, namely, a defective engine subject to premature wear and catastrophic failure.

816. The design, manufacturing, and/or assembly defects existed at the time the class vehicles containing the defective engine left the possession or control of New GM.

817. Based upon the dangerous product defects, New GM failed to meet the expectations of a reasonable consumer. The class vehicles failed their ordinary, intended use because the engine is subject to premature unusual wear and catastrophic failure.

818. The design defects in the vehicles were the direct and proximate cause of economic damages to Plaintiffs, as well as damages incurred or to be incurred by each of the Ohio Class members.

COUNT LIII

**FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM
AGAINST OLD GM IN BANKRUPTCY**

819. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

820. This claim is brought only on behalf of Class members who are Ohio residents and who owned their class vehicle for at least some period of time between July 11, 2009 and November 30, 2009.

821. New GM was aware of the defects in class vehicles sold by Old GM from the moment it came into existence upon entry of the Sale Order And Sale

1 Agreement by which New GM acquired substantially all the assets of Old GM.

2 822. The Ohio Class did not receive notice of the defect in class vehicles
3 prior to the entry of the Sale Order. No recall occurred.

4 823. In September of 2009, the bankruptcy court entered the Bar Date Order,
5 establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claims
6 to be filed against Old GM.

7 824. Because New GM concealed its knowledge of the defect in class
8 vehicles, the Ohio Class did not receive notice of the defect prior to the passage of
9 the Bar Date. No recall occurred.

10 825. In 2011, the bankruptcy court approved a Chapter 11 Plan under which
11 the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceeds
12 of the bankruptcy sale to, among others, the holders of claims that were ultimately
13 allowed.

14 826. The out-of-pocket consideration provided by New GM for its
15 acquisition of Old GM consisted of 10% of the post-closing outstanding shares of
16 New GM common stock and two series of warrants, each to purchase 7.5% of the
17 post-closing shares of New GM (collectively, the "New GM Securities").

18 827. Through an "accordion feature" in the Sale Agreement, New GM agreed
19 that it would provide additional consideration if the aggregate amount of allowed
20 general unsecured claims exceeded \$35 billion. In that event, New GM would be
21 required to issue additional shares of New GM Common Stock for the benefit of the
22 GUC Trust's beneficiaries.

23 828. As of September 30, 2014, the total amount of Allowed Claims was
24 approximately \$31.854 billion, and the total amount of Disputed Claims was
25 approximately \$79.5 million.

26 829. As of September 30, 2014, the GUC Trust had distributed more than
27 89% of the New GM Securities. After a subsequent November 12 distribution, the
28 total assets of the GUC Trust were approximately \$773.7 million – all or nearly all o

1 which is already slated to pay the GUC Trust's expenses and existing beneficiaries of
2 the Trust.

3 830. But for New GM's fraudulent concealment of the defects, the Ohio
4 Class would have filed claims against Old GM before the Bar Date.

5 831. Had the Ohio Class filed timely claims before the Bar Date, the claims
6 would have been allowed.

7 832. New GM's concealment and suppression of the material fact of the
8 defect in class vehicles over the first several months of its existence served to preven
9 the filing of claims by the Class.

10 833. New GM had a duty to disclose the defect in class vehicles because the
11 information was known and/or accessible only to New GM who had superior
12 knowledge and access to the facts, and New GM knew the facts were not known to
13 or reasonably discoverable by Plaintiffs and the Ohio Class. These omitted and
14 concealed facts were material because they directly impacted the safety and the value
15 of the class vehicles purchased or leased by Plaintiffs and the Ohio Class, who had a
16 limited period of time in which to file a claim against the manufacturer of the
17 vehicles, Old GM.

18 834. Plaintiffs and the Ohio Class were unaware of these omitted material
19 facts and would not have acted as they did if they had known of the concealed and/or
20 suppressed facts. Plaintiffs' and the Ohio Class's actions were justified. New GM
21 was in exclusive control of the material facts and such facts were not known to the
22 public, Plaintiffs, or the Ohio Class.

23 835. Because of the concealment and/or suppression of the facts, Plaintiffs
24 and the Ohio Class sustained damage because they lost their chance to file a claim
25 against Old GM and seek payment from the GUC Trust. Had they been aware of the
26 defects that existed in their vehicles, Plaintiffs would have timely filed claims and
27 would have recovered from the GUC Trust.

28 ///

1 836. Accordingly, New GM is liable to the Ohio Class members for their
2 damages in an amount to be proven at trial.

3 837. New GM's acts were done maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiffs' and the Ohio Class's rights
5 and well-being to enrich New GM. New GM's conduct warrants an assessment of
6 punitive damages in an amount sufficient to deter such conduct in the future, which
7 amount is to be determined according to proof.

8 **COUNT LIV**

9 **THIRD-PARTY BENEFICIARY CLAIM**

10 838. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.

12 839. This claim is brought only on behalf of Class members who are Ohio
13 residents (the "Ohio Class").

14 840. In the Sales Agreement through which New GM acquired substantially
15 all of the assets of New GM, New GM explicitly agreed as follows:

16 From and after the Closing, [New GM] shall comply with the
17 certification, reporting and recall requirements of the National Traffic
18 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation
19 Recall Enhancement, Accountability and Documentation Act, the Clean
20 Air Act, the California Health and Safety Code and similar Laws, in
21 each case, to the extent applicable in respect of vehicles and vehicle
22 parts manufactured or distributed by [Old GM].

23 841. With the exception of the portion of the agreement that purports to
24 immunize New GM from its own independent misconduct with respect to cars and
25 parts made by Old GM, the Sales Agreement is a valid and binding contract.

26 842. But for New GM's covenant to comply with the TREAD Act with
27 respect to cars and parts made by Old GM, the TREAD Act would have no
28 application to New GM with respect to those cars and parts. That is because the

1 TREAD Act on its face imposes reporting and recall obligations only on the
2 “manufacturers” of a vehicle. 49 U.S.C. § 30118(c).

3 843. Because New GM agreed to comply with the TREAD Act with respect
4 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
5 make quarterly submissions to NHTSA of “early warning reporting” data, including
6 incidents involving property damage, warranty claims, consumer complaints, and
7 field reports concerning failure, malfunction, lack of durability or other performance
8 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
9 underlying records on which the early warning reports are based and all records
10 containing information on malfunctions that may be related to motor vehicle safety.
11 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
12 or should know that a safety defect exists – including notifying NHTSA and
13 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
14 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

15 844. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
16 Old GM, are the clear intended beneficiaries of New GM’s agreement to comply
17 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
18 benefit of having a manufacturer responsible for monitoring the safety of their Old
19 GM vehicles and making certain that any known defects would be promptly
20 remedied.

21 845. Although the Sale Order which consummated New GM’s purchase of
22 Old GM purported to give New GM immunity from claims concerning vehicles or
23 parts made by Old GM, the bankruptcy court recently ruled that provision to be
24 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
25 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
26 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
27 Plaintiffs’ third-party beneficiary claim as it is based solely on New GM’s post-sale
28 breaches of the promise it made in the Sale Agreement.

1 846. New GM breached its covenant to comply with the TREAD Act with
2 respect to the class vehicles, as it failed to take action to remediate the defects at any
3 time, up to the present.

4 847. Plaintiffs and the Ohio Class were damaged as a result of New GM's
5 breach. Because of New GM's failure to timely remedy the defect in the class
6 vehicles, the value of Old GM class vehicles has diminished in an amount to be
7 determined at trial.

8 **COUNT LV**

9 **UNJUST ENRICHMENT**

10 848. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.

12 849. This claim is brought on behalf of members of the Ohio Class who
13 purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time period
14 after New GM came into existence, and who purchased or leased class vehicles in the
15 time period before New GM came into existence, which cars were still on the road
16 after New GM came into existence (the "Ohio Unjust Enrichment Class").

17 850. New GM has received and retained a benefit from the Plaintiffs and
18 inequity has resulted.

19 851. New GM has benefitted from selling and leasing defective cars,
20 including Certified Pre-Owned cars, whose value was artificially inflated by New
21 GM's concealment of defect issues that plagued class vehicles for more than they
22 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
23 pay other costs.

24 852. With respect to the class vehicles purchased before New GM came into
25 existence that were still on the road after New GM came into existence and as to
26 which New GM had unjustly and unlawfully determined not to recall, New GM
27 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
28 from its statements about the success of New GM.

1 853. Thus, all Ohio Unjust Enrichment Class Members conferred a benefit or
2 New GM.

3 854. It is inequitable for New GM to retain these benefits.

4 855. Plaintiffs were not aware about the true facts about class vehicles, and
5 did not benefit from GM's conduct.

6 856. New GM knowingly accepted the benefits of its unjust conduct.
7 As a result of New GM's conduct, the amount of its unjust enrichment should be
8 disgorged, in an amount according to proof.

9 Pennsylvania

10 **COUNT LVI**

11 **VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES**
12 **AND CONSUMER PROTECTION LAW**

13 **(73 P.S. § 201-1, et seq.)**

14 857. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 858. This claim is brought only on behalf of Nationwide Class Members who
17 are Pennsylvania residents (the "Pennsylvania Class").

18 859. Plaintiffs purchased or leased their class vehicles primarily for personal
19 family or household purposes within the meaning of 73 P.S. § 201-9.2.

20 860. All of the acts complained of herein were perpetrated by New GM in the
21 course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

22 861. The Pennsylvania Unfair Trade Practices and Consumer Protection Law
23 ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including:

24 (i) "Representing that goods or services have ... characteristics, ... Benefits or
25 qualities that they do not have;" (ii) "Representing that goods or services are of a
26 particular standard, quality or grade ... if they are of another;" (iii) "Advertising
27 goods or services with intent not to sell them as advertised;" and (iv) "Engaging in
28 any other fraudulent or deceptive conduct which creates a likelihood of confusion or

1 misunderstanding." 73 P.S. § 201-2(4).

2 862. New GM engaged in unlawful trade practices, including representing
3 that class vehicles have characteristics, uses, benefits, and qualities which they do no
4 have; representing that class vehicles are of a particular standard and quality when
5 they are not; advertising class vehicles with the intent not to sell them as advertised;
6 and engaging in any other fraudulent or deceptive conduct which creates a likelihood
7 of confusion or of misunderstanding.

8 863. In the course of its business, New GM systematically devalued safety
9 and concealed defects in the class vehicles as described herein and otherwise
10 engaged in activities with a tendency or capacity to deceive. New GM also engaged
11 in unlawful trade practices by employing deception, deceptive acts or practices,
12 fraud, misrepresentations, or concealment, suppression or omission of any material
13 fact with intent that others rely upon such concealment, suppression or omission, in
14 connection with the sale of class vehicles.

15 864. From the date of its inception on July 11, 2009, New GM knew of many
16 serious defects affecting many models and years of GM-branded vehicles, because o
17 (i) the knowledge of Old GM personnel who remained at New GM; (ii) continuous
18 reports, investigations, and notifications from regulatory authorities; and (iii)
19 ongoing performance of New GM's TREAD Act obligations. New GM became
20 aware of other serious defects and systemic safety issues years ago, but concealed all
21 of that information.

22 865. New GM was also aware that it valued cost-cutting over safety, selected
23 parts from the cheapest supplier regardless of quality, and actively discouraged
24 employees from finding and flagging known safety defects, and that this approach
25 would necessarily cause the existence of more defects in the vehicles it designed and
26 manufactured and the failure to disclose and remedy defects in all class vehicles.
27 New GM concealed this information as well.

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1 866. By failing to disclose and by actively concealing the many defects in the
2 class vehicles, by marketing its vehicles as safe, reliable, and of high quality, and by
3 presenting itself as a reputable manufacturer that valued safety and stood behind its
4 vehicles after they were sold, New GM engaged in unfair and deceptive business
5 practices in violation of the Pennsylvania CPL.

6 867. In the course of New GM's business, it willfully failed to disclose and
7 actively concealed the dangerous risk posed by the defects discussed above. New
8 GM compounded the deception by repeatedly asserting that GM-branded vehicles
9 were safe, reliable, and of high quality, and by claiming to be a reputable
10 manufacturer that valued safety and stood behind its vehicles once they are on the
11 road.

12 868. New GM's unfair or deceptive acts or practices were likely to and did in
13 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
14 reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of
15 safety at New GM, and the true value of the class vehicles.

16 869. New GM intentionally and knowingly misrepresented material facts
17 regarding the class vehicles with an intent to mislead Plaintiffs and the Pennsylvania
18 Class.

19 870. New GM knew or should have known that its conduct violated the
20 Pennsylvania CPL.

21 871. As alleged above, New GM made material statements about the safety
22 and reliability of the class vehicles and the GM brand that were either false or
23 misleading.

24 872. New GM owed Plaintiffs a duty to disclose the true safety and reliability
25 of the class vehicles and the devaluing of safety at New GM, because New GM:

26 (a) Possessed exclusive knowledge that it valued cost-cutting over
27 safety, selected parts from the cheapest supplier regardless of quality, and actively
28 discouraged employees from finding and flagging known safety defects, and that this

1 approach would necessarily cause the existence of more defects in the vehicles it
2 designed and manufactured;

3 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

4 (c) Made incomplete representations about the safety and reliability
5 of the class vehicles generally, and the valve guide defects in particular, while
6 purposefully withholding material facts from Plaintiffs that contradicted these
7 representations.

8 873. Because New GM fraudulently concealed the defects in the class
9 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
10 attached to those vehicles by New GM's conduct, they are now worth significantly
11 less than they otherwise would be.

12 874. New GM's systemic devaluation of safety and its concealment of the
13 defects in the class vehicles were material to Plaintiffs and the Pennsylvania Class.
14 A vehicle made by a reputable manufacturer of vehicles is worth more than an
15 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
16 conceals defects rather than promptly remedies them.

17 875. Plaintiffs and the Pennsylvania Class suffered ascertainable loss caused
18 by New GM's misrepresentations and its concealment of and failure to disclose
19 material information. Plaintiffs who purchased class vehicles after the date of New
20 GM's inception either would have paid less for their vehicles or would not have
21 purchased or leased them at all. Plaintiffs did not receive the benefit of their bargain
22 as a result of New GM's misconduct.

23 876. Regardless of time of purchase or lease, no Plaintiffs would have
24 maintained and continued to drive their vehicles had they been aware of New GM's
25 misconduct. By contractually assuming TREAD Act responsibilities with respect to
26 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
27 those vehicles because the TREAD Act on its face only applies to vehicle
28 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM

1 vehicle owners to refrain from unfair and deceptive acts or practices under the
2 Pennsylvania CPL. And, in any event, all class vehicle owners suffered ascertainable
3 loss in the form of the diminished value of their vehicles as a result of New GM's
4 deceptive and unfair acts and practices that occurred in the course of New GM's
5 business.

6 877. As a direct and proximate result of New GM's violations of the
7 Pennsylvania CPL, Plaintiffs and the Pennsylvania Class have suffered injury-in-fact
8 and/or actual damage.

9 878. New GM is liable to Plaintiffs and the Pennsylvania Class for treble
10 their actual damages or \$100, whichever is greater, and attorneys' fees and costs. 73
11 P.S. § 201-9.2(a). Plaintiffs and the Pennsylvania Class are also entitled to an award
12 of punitive damages given that New GM's conduct was malicious, wanton, willful,
13 oppressive, or exhibited a reckless indifference to the rights of others.

14 COUNT LVII

15 FRAUD BY CONCEALMENT

16 879. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.

18 880. This claim is brought on behalf of Nationwide Class Members who are
19 Pennsylvania residents (the "Pennsylvania Class").

20 881. New GM concealed and suppressed material facts concerning the
21 quality of the class vehicles.

22 882. New GM concealed and suppressed material facts concerning the
23 culture of New GM - a culture characterized by an emphasis on cost-cutting, the
24 studious avoidance of quality issues, and a shoddy design process.

25 883. New GM concealed and suppressed material facts concerning the
26 defects in the class vehicles, and that it valued cost-cutting over quality and took
27 steps to ensure that its employees did not reveal known defects to regulators or
28 consumers.

1 884. New GM did so in order to boost confidence in its vehicles and falsely
2 assure purchasers and lessors of its vehicles and Certified Previously Owned vehicles
3 that New GM was a reputable manufacturer that stands behind its vehicles after they
4 are sold and that its vehicles are safe and reliable. The false representations were
5 material to consumers, both because they concerned the quality and safety of the
6 class vehicles and because the representations played a significant role in the value of
7 the vehicles.

8 885. New GM had a duty to disclose the defects in the class vehicles because
9 they were known and/or accessible only to New GM, were in fact known to New
10 GM as of the time of its creation in 2009 and at every point thereafter, New GM had
11 superior knowledge and access to the facts, and New GM knew the facts were not
12 known to or reasonably discoverable by Plaintiffs and the Pennsylvania Class. New
13 GM also had a duty to disclose because it made many general affirmative
14 representations about the safety, quality, and lack of defects in its vehicles, as set
15 forth above, which were misleading, deceptive and incomplete without the disclosure
16 of the additional facts set forth above regarding defects in the class vehicles. Having
17 volunteered to provide information to Plaintiffs, GM had the duty to disclose not just
18 the partial truth, but the entire truth. These omitted and concealed facts were material
19 because they directly impact the value of the class vehicles purchased or leased by
20 Plaintiffs and the Pennsylvania Class.

21 886. New GM actively concealed and/or suppressed these material facts, in
22 whole or in part, to protect its profits and avoid recalls that would hurt the brand's
23 image and cost New GM money, and it did so at the expense of Plaintiffs and the
24 Pennsylvania Class.

25 887. On information and belief, New GM has still not made full and adequate
26 disclosure and continues to defraud Plaintiffs and the Pennsylvania Class and conceal
27 material information regarding defects that exist in the class vehicles.

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1 888. Plaintiffs and the Pennsylvania Class were unaware of these omitted
2 material facts and would not have acted as they did if they had known of the
3 concealed and/or suppressed facts, in that they would not have purchased cars
4 manufactured by New GM; and/or they would not have purchased cars manufactured
5 by Old GM in the time after New GM had come into existence and had fraudulently
6 opted to conceal, and to misrepresent, the true facts about the vehicles; and/or would
7 not have continued to drive their vehicles or would have taken other affirmative
8 steps. Plaintiffs' and the Pennsylvania Class's actions were justified. New GM was
9 in exclusive control of the material facts and such facts were not known to the public
10 Plaintiffs, or the Pennsylvania Class.

11 889. Because of the concealment and/or suppression of the facts, Plaintiffs
12 and the Pennsylvania Class sustained damage because they own vehicles that
13 diminished in value as a result of New GM's concealment of, and failure to timely
14 disclose, the defects in the class vehicles and the quality issues engendered by New
15 GM's corporate policies. Had they been aware of the defects that existed in the class
16 vehicles, Plaintiffs who purchased new or Certified Previously Owned vehicles after
17 New GM came into existence either would have paid less for their vehicles or would
18 not have purchased or leased them at all; and no Plaintiffs regardless of time of
19 purchase or lease would have maintained their vehicles.

20 890. The value of all Pennsylvania Class Members' vehicles has diminished
21 as a result of New GM's fraudulent concealment of the defects which have tarnished
22 the Corvette brand and made any reasonable consumer reluctant to purchase any of
23 the class vehicles, let alone pay what otherwise would have been fair market value
24 for the vehicles.

25 891. Accordingly, New GM is liable to the Pennsylvania Class for damages
26 in an amount to be proven at trial.

27 892. New GM's acts were done maliciously, oppressively, deliberately, with
28 intent to defraud, and in reckless disregard of Plaintiffs' and the Pennsylvania Class'

1 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
2 of punitive damages in an amount sufficient to deter such conduct in the future,
3 which amount is to be determined according to proof.

4 **COUNT LVIII**

5 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

6 **(13 PA. CONS. STAT. ANN. § 2314)**

7 893. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 894. This claim is brought only on behalf of the Pennsylvania Class.

10 895. New GM is s a merchant with respect to motor vehicles.

11 896. A warranty that the class vehicles were in merchantable condition was
12 implied by law when New GM sold or leased the class vehicles to Plaintiffs and the
13 Pennsylvania Class on or after July 11, 2009.

14 897. These vehicles, when sold and at all times thereafter, were not in
15 merchantable condition and are not fit for the ordinary purpose for which cars are
16 used. Specifically, the class vehicles are inherently defective in that there are defects
17 in the engine which result in premature unusual wear and catastrophic failure.

18 898. New GM was provided notice of these issues by numerous complaints
19 filed against it, by its own internal investigations, and by numerous individual letters
20 and communications sent by Plaintiffs and the Pennsylvania Class before or within a
21 reasonable amount of time after New GM issued the recall and the allegations of
22 vehicle defects became public.

23 899. As a direct and proximate result of New GM's breach of the warranties
24 of merchantability, Plaintiffs and the Pennsylvania Class members have been
25 damaged in an amount to be proven at trial.

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COUNT LIX

FRAUD BY CONCEALMENT OF THE RIGHT TO FILE A CLAIM
AGAINST OLD GM IN BANKRUPTCY

900. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

901. This claim is brought only on behalf of Class members who are Pennsylvania residents and who owned their class vehicle for at least some period of time between July 11, 2009 and November 30, 2009.

902. New GM was aware of the defects in class vehicles sold by Old GM from the moment it came into existence upon entry of the Sale Order And Sale Agreement by which New GM acquired substantially all the assets of Old GM.

903. The Pennsylvania Class did not receive notice of the defect in class vehicles prior to the entry of the Sale Order. No recall occurred.

904. In September of 2009, the bankruptcy court entered the Bar Date Order, establishing November 30, 2009, as the deadline (the "Bar Date") for proof of claims to be filed against Old GM.

905. Because New GM concealed its knowledge of the defect in class vehicles, the Pennsylvania Class did not receive notice of the defect prior to the passage of the Bar Date. No recall occurred.

906. In 2011, the bankruptcy court approved a Chapter 11 Plan under which the General Unsecured Creditors' Trust ("GUC Trust") would distribute the proceeds of the bankruptcy sale to, among others, the holders of claims that were ultimately allowed.

907. The out-of-pocket consideration provided by New GM for its acquisition of Old GM consisted of 10% of the post-closing outstanding shares of New GM common stock and two series of warrants, each to purchase 7.5% of the post-closing shares of New GM (collectively, the "New GM Securities").

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1 908. Through an "accordion feature" in the Sale Agreement, New GM agree
2 that it would provide additional consideration if the aggregate amount of allowed
3 general unsecured claims exceeded \$35 billion. In that event, New GM would be
4 required to issue additional shares of New GM Common Stock for the benefit of the
5 GUC Trust's beneficiaries.

6 909. As of September 30, 2014, the total amount of Allowed Claims was
7 approximately \$31.854 billion, and the total amount of Disputed Claims was
8 approximately \$79.5 million.

9 910. As of September 30, 2014, the GUC Trust had distributed more than
10 89% of the New GM Securities. After a subsequent November 12 distribution, the
11 total assets of the GUC Trust were approximately \$773.7 million - all or nearly all of
12 which is already slated to pay the GUC Trust's expenses and existing beneficiaries o
13 the Trust.

14 911. But for New GM's fraudulent concealment of the defects, the
15 Pennsylvania Class would have filed claims against Old GM before the Bar Date.

16 912. Had the Pennsylvania Class filed timely claims before the Bar Date, the
17 claims would have been allowed.

18 913. New GM's concealment and suppression of the material fact of the
19 defect in class vehicles over the first several months of its existence served to preven
20 the filing of claims by the Class.

21 914. New GM had a duty to disclose the defects in class vehicles because the
22 information was known and/or accessible only to New GM who had superior
23 knowledge and access to the facts, and New GM knew the facts were not known to
24 or reasonably discoverable by Plaintiffs and the Pennsylvania Class. These omitted
25 and concealed facts were material because they directly impacted the safety and the
26 value of the class vehicles purchased or leased by Plaintiffs and the Pennsylvania
27 Class, who had a limited period of time in which to file a claim against the
28 manufacturer of the vehicles, Old GM.

1 915. Plaintiffs and the Pennsylvania Class were unaware of these omitted
2 material facts and would not have acted as they did if they had known of the
3 concealed and/or suppressed facts. Plaintiffs' and the Pennsylvania Class's actions
4 were justified. New GM was in exclusive control of the material facts and such facts
5 were not known to the public, Plaintiffs, or the Pennsylvania Class.

6 916. Because of the concealment and/or suppression of the facts, Plaintiffs
7 and the Pennsylvania Class sustained damage because they lost their chance to file a
8 claim against Old GM and seek payment from the GUC Trust. Had they been aware
9 of the defects that existed in their vehicles, Plaintiffs would have timely filed claims
10 and would have recovered from the GUC Trust.

11 917. Accordingly, New GM is liable to the Pennsylvania Class members for
12 their damages in an amount to be proven at trial.

13 918. New GM's acts were done maliciously, oppressively, deliberately, with
14 intent to defraud, and in reckless disregard of Plaintiffs' and the Pennsylvania Class's
15 rights and well-being to enrich New GM. New GM's conduct warrants an assessment
16 of punitive damages in an amount sufficient to deter such conduct in the future,
17 which amount is to be determined according to proof.

18 **COUNT LX**

19 **THIRD-PARTY BENEFICIARY CLAIM**

20 919. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.

22 920. This claim is brought only on behalf of Class members who are
23 Pennsylvania residents (the "Pennsylvania Class").

24 921. In the Sales Agreement through which New GM acquired substantially
25 all of the assets of New GM, New GM explicitly agreed as follows:

26 From and after the Closing, [New GM] shall comply with the
27 certification, reporting and recall requirements of the National Traffic
28 and Motor Vehicle and Motor Vehicle Safety Act, the Transportation

1 Recall Enhancement, Accountability and Documentation Act, the Clean
2 Air Act, the California Health and Safety Code and similar Laws, in
3 each case, to the extent applicable in respect of vehicles and vehicle
4 parts manufactured or distributed by [Old GM].

5 922. With the exception of the portion of the agreement that purports to
6 immunize New GM from its own independent misconduct with respect to cars and
7 parts made by Old GM, the Sales Agreement is a valid and binding contract.

8 923. But for New GM's covenant to comply with the TREAD Act with
9 respect to cars and parts made by Old GM, the TREAD Act would have no
10 application to New GM with respect to those cars and parts. That is because the
11 TREAD Act on its face imposes reporting and recall obligations only on the
12 "manufacturers" of a vehicle. 49 U.S.C. § 30118(c).

13 924. Because New GM agreed to comply with the TREAD Act with respect
14 to vehicles manufactured by Old GM, New GM agreed to (among other things): (a)
15 make quarterly submissions to NHTSA of "early warning reporting" data, including
16 incidents involving property damage, warranty claims, consumer complaints, and
17 field reports concerning failure, malfunction, lack of durability or other performance
18 issues. See 49 U.S.C. § 30166(m)(3); 49 C.F.R. § 579.21; (b) retain for five years all
19 underlying records on which the early warning reports are based and all records
20 containing information on malfunctions that may be related to motor vehicle safety.
21 See 49 C.F.R. §§ 576.5 to 576.6; and (c) take immediate remedial action if it knows
22 or should know that a safety defect exists - including notifying NHTSA and
23 consumers and ordering a recall if necessary. See 49 U.S.C. § 30118(c); 49 C.F.R. §
24 573.6(b)-(c); 49 C.F.R. §§ 577.5(a), 577.7(a).

25 925. Plaintiffs, as owners and lessors of vehicles and parts manufactured by
26 Old GM, are the clear intended beneficiaries of New GM's agreement to comply
27 with the TREAD Act. Under the Sale Agreement, Plaintiffs were to receive the
28 benefit of having a manufacturer responsible for monitoring the safety of their Old

1 GM vehicles and making certain that any known defects would be promptly
2 remedied.

3 926. Although the Sale Order which consummated New GM's purchase of
4 Old GM purported to give New GM immunity from claims concerning vehicles or
5 parts made by Old GM, the bankruptcy court recently ruled that provision to be
6 unenforceable, and that New GM can be held liable for its own post-bankruptcy sale
7 conduct with respect to cars and parts made by Old GM. Therefore, that provision of
8 the Sale Order and related provisions of the Sale Agreement cannot be read to bar
9 Plaintiffs' third-party beneficiary claim as it is based solely on New GM's post-sale
10 breaches of the promise it made in the Sale Agreement.

11 927. New GM breached its covenant to comply with the TREAD Act with
12 respect to the class vehicles, as it failed to take action to remediate the defects at any
13 time, up to the present.

14 928. Plaintiffs and the Pennsylvania Class were damaged as a result of New
15 GM's breach. Because of New GM's failure to timely remedy the defect in class
16 vehicles, the value of Old GM class vehicles has diminished in an amount to be
17 determined at trial.

18 **COUNT LXI**

19 **UNJUST ENRICHMENT**

20 929. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.

22 930. This claim is brought on behalf of members of the Pennsylvania Class
23 who purchased New GM vehicles, or Certified Pre-Owned GM vehicles in the time
24 period after New GM came into existence, and who purchased or leased class
25 vehicles in the time period before New GM came into existence, which cars were
26 still on the road after New GM came into existence (the "Pennsylvania Unjust
27 Enrichment Class").

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1 931. New GM has received and retained a benefit from the Plaintiffs and
2 inequity has resulted.

3 932. New GM has benefitted from selling and leasing defective cars,
4 including Certified Pre-Owned cars, whose value was artificially inflated by New
5 GM's concealment of defect issues that plagued class vehicles, for more than they
6 were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to
7 pay other costs.

8 933. With respect to the class vehicles purchased before New GM came into
9 existence that were still on the road after New GM came into existence and as to
10 which New GM had unjustly and unlawfully determined not to recall, New GM
11 benefitted by avoiding the costs of a recall and other lawsuits, and further benefitted
12 from its statements about the success of New GM.

13 934. Thus, all Pennsylvania Unjust Enrichment Class Members conferred a
14 benefit on New GM.

15 935. It is inequitable for New GM to retain these benefits.

16 936. Plaintiffs were not aware about the true facts about class vehicles, and
17 did not benefit from GM's conduct.

18 937. New GM knowingly accepted the benefits of its unjust conduct.

19 938. As a result of New GM's conduct, the amount of its unjust enrichment
20 should be disgorged, in an amount according to proof.

21 Tennessee

22 **COUNT LXII**

23 **VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT**

24 (TENN. CODE ANN. § 47-18-101, et seq.)

25 939. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.

27 940. This claim is brought only on behalf of Nationwide Class Members who
28 are Tennessee residents (the "Tennessee Class").

1 941. Plaintiffs and the Tennessee Class are "natural persons" and
2 "consumers" within the meaning of TENN. CODE ANN. § 47-18-103(2).

3 942. New GM is a "person" within the meaning of TENN. CODE ANN. §
4 47-18-103(2).

5 943. New GM's conduct complained of herein affected "trade," "commerce"
6 or "consumer transactions" within the meaning of TENN. CODE ANN. § 47-18-
7 103(19).

8 944. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits
9 "[u]nfair or deceptive acts or practices affecting the conduct of any trade or
10 commerce," including but not limited to: "Representing that goods or services have
11 ... characteristics, [or] ... benefits ... that they do not have...;" "Representing that
12 goods or services are of a particular standard, quality or grade... if they are of
13 another;" and "Advertising goods or services with intent not to sell them as
14 advertised." TENN. CODE ANN. § 47-18-104. New GM violated the Tennessee
15 CPA by engaging in unfair or deceptive acts, including representing that class
16 vehicles have characteristics or benefits that they did not have; representing that class
17 vehicles are of a particular standard, quality, or grade when they are of another; and
18 advertising class vehicles with intent not to sell them as advertised.

19 945. In the course of its business, New GM systematically devalued safety
20 and concealed defects in the class vehicles as described herein and otherwise
21 engaged in activities with a tendency or capacity to deceive. New GM also engaged
22 in unlawful trade practices by employing deception, deceptive acts or practices,
23 fraud, misrepresentations, or concealment, suppression or omission of any material
24 fact with intent that others rely upon such concealment, suppression or omission, in
25 connection with the sale of class vehicles.

26 946. From the date of its inception on July 11, 2009, New GM knew of many
27 serious defects affecting many models and years of GM-branded vehicles, because of
28 (i) the knowledge of Old GM personnel who remained at New GM; (ii) continuous

1 reports, investigations, and notifications from regulatory authorities; and (iii)
2 ongoing performance of New GM's TREAD Act obligations, as discussed above.
3 New GM became aware of other serious defects and systemic safety issues years
4 ago, but concealed all of that information.

5 947. New GM was also aware that it valued cost-cutting over safety, selected
6 parts from the cheapest supplier regardless of quality, and actively discouraged
7 employees from finding and flagging known safety defects, and that this approach
8 would necessarily cause the existence of more defects in the vehicles it designed and
9 manufactured and the failure to disclose and remedy defects in all GM-branded
10 vehicles. New GM concealed this information as well.

11 948. By failing to disclose and by actively concealing the many defects in
12 GM-branded vehicles, by marketing its vehicles as safe, reliable, and of high quality,
13 and by presenting itself as a reputable manufacturer that valued safety and stood
14 behind its vehicles after they were sold, New GM engaged in unfair and deceptive
15 business practices in violation of the Tennessee CPA.

16 949. In the course of New GM's business, it willfully failed to disclose and
17 actively concealed the dangerous risk posed by the defects discussed above. New
18 GM compounded the deception by repeatedly asserting that GM-branded vehicles
19 were safe, reliable, and of high quality, and by claiming to be a reputable
20 manufacturer that valued safety and stood behind its vehicles once they are on the
21 road.

22 950. New GM's unfair or deceptive acts or practices were likely to and did in
23 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
24 reliability of GM-branded vehicles, the quality of the GM brand, the devaluing of
25 safety at New GM, and the true value of the class vehicles.

26 951. New GM intentionally and knowingly misrepresented material facts
27 regarding the class vehicles with an intent to mislead Plaintiffs and the Tennessee
28 Class.

1 952. New GM knew or should have known that its conduct violated the
2 Tennessee CPA.

3 953. As alleged above, New GM made material statements about the safety
4 and reliability of the class vehicles and the GM brand that were either false or
5 misleading.

6 954. New GM owed Plaintiffs a duty to disclose the true safety and reliability
7 of the class vehicles and the devaluing of safety at New GM, because New GM:

8 (a) Possessed exclusive knowledge that it valued cost-cutting over
9 safety, selected parts from the cheapest supplier regardless of quality, and actively
10 discouraged employees from finding and flagging known safety defects, and that this
11 approach would necessarily cause the existence of more defects in the vehicles it
12 designed and manufactured;

13 (b) Intentionally concealed the foregoing from Plaintiffs; and/or

14 (c) Made incomplete representations about the safety and reliability
15 of the class vehicles generally, and the valve guide defects in particular, while
16 purposefully withholding material facts from Plaintiffs that contradicted these
17 representations.

18 955. Because New GM fraudulently concealed the defects in the class
19 vehicles, the value of the class vehicles has greatly diminished. In light of the stigma
20 attached to those vehicles by New GM's conduct, they are now worth significantly
21 less than they otherwise would be.

22 956. New GM's systemic devaluation of safety and its concealment of the
23 defects in the class vehicles were material to Plaintiffs and the Tennessee Class. A
24 vehicle made by a reputable manufacturer of vehicles is worth more than an
25 otherwise comparable vehicle made by a disreputable manufacturer of vehicles that
26 conceals defects rather than promptly remedies them.

27 957. Plaintiffs and the Tennessee Class suffered ascertainable loss caused by
28 New GM's misrepresentations and its concealment of and failure to disclose material

1 information. Plaintiffs who purchased class vehicles after the date of New GM's
2 inception either would have paid less for their vehicles or would not have purchased
3 or leased them at all. Plaintiffs did not receive the benefit of their bargain as a result
4 of New GM's misconduct.

5 958. Regardless of time of purchase or lease, no Plaintiffs would have
6 maintained and continued to drive their vehicles had they been aware of New GM's
7 misconduct. By contractually assuming TREAD Act responsibilities with respect to
8 Old GM class vehicles, New GM effectively assumed the role of manufacturer of
9 those vehicles because the TREAD Act on its face only applies to vehicle
10 manufacturers. 49 U.S.C. § 30118(c). New GM had an ongoing duty to all GM
11 vehicle owners to refrain from unfair and deceptive acts or practices under the
12 Tennessee CPA. And, in any event, all class vehicle owners suffered ascertainable
13 loss in the form of the diminished value of their vehicles as a result of New GM's
14 deceptive and unfair acts and practices that occurred in the course of New GM's
15 business.

16 959. As a direct and proximate result of New GM's violations of the
17 Tennessee CPA, Plaintiffs and the Tennessee Class have suffered injury-in-fact
18 and/or actual damage.

19 960. Pursuant to TENN. CODE § 47-18-109(a), Plaintiffs and the Tennessee
20 Class seek monetary relief against New GM measured as actual damages in an
21 amount to be determined at trial, treble damages as a result of New GM's willful or
22 knowing violations, and any other just and proper relief available under the
23 Tennessee CPA.

24 COUNT LXIII

25 FRAUD BY CONCEALMENT

26 961. Plaintiffs reallege and incorporate by reference all paragraphs as though
27 fully set forth herein.

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